

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TERRI J. VITT,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

No. 06-7184

ORDER REGARDING
DEFENDANT'S
MOTION TO DISMISS

Defendant Michael J. Astrue, in his capacity as Commissioner of the Social Security Administration (Commissioner),¹ moves to dismiss Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) on the ground that it is untimely. On June 18, 2007, Plaintiff filed an amended complaint addressing the untimeliness issue raised in Defendant's motion.

Because Plaintiff has filed an amended complaint, Defendant's motion may be moot. Defendant, therefore, must inform the Court whether he wishes to stand on his present motion to dismiss, to

¹On February 1, 2007, Michael J. Astrue was confirmed as Commissioner for the Social Security Administration, and is therefore substituted for JoAnne B. Barnhart as the named defendant in this action. Fed. R. Civ. P. 25(d)(1).

1 withdraw this motion and file another motion to dismiss, or to
2 withdraw the motion to dismiss and proceed on the merits of the
3 case. Defendant must inform the Court of how he wishes to proceed
4 within one week from the date of this order.

5
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7 Dated: 6/29/07



CLAUDIA WILKEN
United States District Judge